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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,765	06/27/2003	Atsushi Ohba	GOT 166	5509
23995	7590	07/27/2004	EXAMINER	
RABIN & Berdo, PC 1101 14TH STREET, NW SUITE 500 WASHINGTON, DC 20005			PRUNNER, KATHLEEN J	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/606,765		OHBA ET AL	
	<b>Examiner</b>		<b>Art Unit</b>	
	Kathleen J. Prunner		3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003 and 10 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-7 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>062703</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

1. Figures 15 (A) and (B) should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 15(A) show(s) modified forms of construction in the same view. It is suggested that the parts be bracketed together to indicate a single entity. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
3. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations

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indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

### *Specification*

1. The following informalities in the claims are noted: (A) in claim 2, on line 2, "to be . . . inner" should be deleted; (B) in claim 2, on line 3, "circumference . . . cylinder" should be deleted; (C) in claims 3 and 4, on line 2, "to be . . . outer" should be deleted; (D) in claims 3 and 4, on line 3, "circumference . . . body" should be deleted; (E) in claims 5 and 6, on line 2, "to be installed at the" should be deleted; and (F) in claims 5 and 6, on line 3, "cylindrical body" should be deleted. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kageyama et al. Kageyama et al. disclose a stick type cosmetic material feeding container having all the claimed features including a front cylinder (constituted by front barrel 1) and a base cylinder (constituted by rear barrel 2) which are coaxially connected (note Fig. 1) in such a manner that the front cylinder 1 and the base cylinder 2 can freely make relative rotations (note lines 28-33 in col. 3), a core chuck member (constituted by slider 4) retaining a stick type cosmetic material (note lines 25-28 in col. 3) by means of a stick type cosmetic material retaining section (constituted by stick holding part 4a) is arranged in the front cylinder 1 and

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which has a feeding mechanism (note lines 36-51 in col. 5) for causing the core chuck member 4 to make a feeding stroke in an axial direction due to the relative rotations of the front cylinder 1 and the base cylinder 2 (note lines 28-33 in col. 3), wherein a spiral groove (constituted by helical groove 3a) is formed on an inner circumferential surface of the base cylinder 2 (note Fig. 1), and the core chuck member 4 comprises a shaft (note Fig. 9) extending from the stick type cosmetic material retaining section 4a; a cylindrical body (constituted by engaging part 4e) which is installed at an edge of the shaft (note Fig. 9), comes into contact with a part of the front cylinder 1 (note Fig. 1) and a part of the base cylinder 2 at an advance limit and a retreat limit of a feeding stroke of the core chuck member 4, respectively, and defines the advance limit and the retreat limit, respectively, (note lines 52-59 in col. 5 and lines 40-44 in col. 7); and an engagement projection (constituted by helical projections 4d) which is installed at an outer circumference of the cylindrical body 4e (note Fig. 9) and elastically (note lines 42-44 in col. 6) and spirally engaged with the spiral groove 3a (note lines 42-44 in col. 5). The grooves 4f of Kageyama et al. inherently define a shock absorbing section which is formed at the cylindrical body 4e to absorb a shock in an axial direction, and wherein the engagement projection 4d goes over the spiral groove 3a and makes a clutch rotation due to a further rotary load on the core chuck member 4 at least at the retreat limit of the core chuck member 4, the shock absorbing section absorbs a shock in an axial direction to the core chuck member 4 which has arisen resulting from the clutch rotation (note lines 52-59 in col. 5 and lines 40-44 in col. 7). With respect to claim 2, Kageyama et al. further disclose that the spiral groove 3a is formed as a roulette-shaped spiral (note Fig. 7), that an outside diameter of the cylindrical body 4e is slightly smaller than an inside diameter of the roulette-shaped spiral groove 3a in the base cylinder 2 (note Fig. 9), and that the engagement projection 4d is spirally engaged with a root of the roulette-shaped spiral groove 3a (note Fig. 8). With respect to claim 4, Kageyama et al. also disclose that the engagement projection 4d is installed on a fraction provided among a plurality of slits (constituted by grooves 4f) which extend in an axial direction at an edge of the cylindrical body 4e (note Fig. 9). With regard to claim 7, Kageyama et al. additionally disclose



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that the front cylinder 1 has a plurality of slide grooves (formed by guide ribs 1f, note Figs. 2 and 3) extending in an axial direction, that the stick type cosmetic material retaining section 4a has a plurality of claws (constituted by stick holding tongues 4c, note Figs. 9 and 11) for retaining the stick type cosmetic material arranged at a front end of the core chuck member 4, and that the claws 4c are located at the plurality of slide grooves in the front cylinder 1 and guide the core chuck member 4 so that the core chuck member 4 can move only in an axial direction along an inner circumference of the front cylinder 1 (note lines 35-38 in col. 4).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kageyama et al. Although Kageyama et al. fail to disclose that the slits (constituted by grooves 4f) can be hooked (claim 5) or spiral (claim 6) in configuration, it is considered that the configuration of the claimed slit is a matter of design choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed slit was significant (see *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)).

### ***Allowable Subject Matter***

6. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

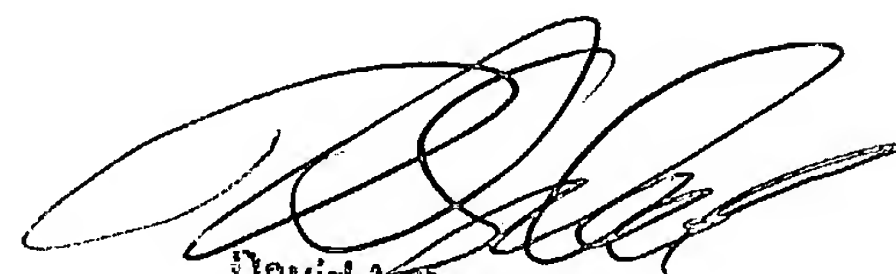
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***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Group 3700

Kathleen J. Prunner

July 19, 2004